



Board of Public Works & Safety and Stormwater Board

Regular Meeting Agenda

2:00 p.m. August 16, 2021

Goshen Police & Court Building, 111 East Jefferson Street, Goshen, Indiana

To access online streaming of the meeting, go to <https://goshenindiana.org/calendar>

Call to Order by Mayor Jeremy Stutsman

Approval of Minutes: August 9, 2021

Approval of Agenda

- 1) Partial Sidewalk Closure at 111 S. Main Street
- 2) College Avenue Road Closure East of Lincolnway East/US 33 (JN: 2016-0021)
- 3) Madison Street & College Avenue Reconstruction (JN: 2021-0016)

Privilege of the Floor

Approval of Civil City and Utility Claims

Adjournment



MINUTES of August 9, 2021 Regular Meeting

Board of Public Works & Safety and Stormwater Board

Held 2:00 p.m. Goshen Police & Court Building, 111 East Jefferson Street, Goshen, Indiana

Present: Chair Jeremy Stutsman, Member Mary Nichols, Member Mike Landis, Member Barb Swartley,
Member DeWayne Riouse

Absent: None

Riouse/Swartley moved to approve the minutes of August 2, 2021 as presented. Passed 5-0

Mayor Stutsman suggested adding a Road Closure of North 5th Street and Oakridge and East Wilden Avenue that was included in the packet but not listed on the agenda.

Riouse/Swartley moved to approve the agenda as suggested. Passed 5-0

Police Department Hiring: Kraig Raymond Caridine as a Probationary Patrol Officer

Chief of Police Jose' Miller presented the packet memo.

Riouse/Swartley moved to approve the hiring of Kraig Raymond Caridine as a Probationary Patrol Officer for the Goshen Police Department effective August 9, 2021. Passed 5-0

Kraig Raymond Caridine was sworn in by Mayor Stutsman.

Open Bids – Madison Street and College Avenue Reconstruction Project No. 2021-0016

Mayor Stutsman opened the sealed bids

Niblock Excavating:	\$585,735.50
Milestone Contractors North:	\$729,350.50
Reith Riley:	\$698,556.65

Stutsman/Swartley moved to refer these bids to the Engineering Department for review. Passed 5-0



Change Order No. 6 for East Goshen Water Main Replacement Project – Steury Avenue to Blackport Drive JN: 2019-0037

Director of Public Works Dustin Sailor presented the packet memo.

Riouse/Swartley moved to approve Change Order No. 6 for the East Goshen Water Main Replacement Project for a decrease of \$7,015.43. Passed 5-0

Approval of 2021 Community Development Block Grant (CDBG) Agreements

Community Development Specialist Meaghan Bylsma presented the packet memo.

Mayor Stutsman thanked Bylsma for her time and attention to these large agreements.

Riouse/Swartley moved to approve the Planning Grant, Public Service Grant and Housing Grant Agreements for the Program Year 2021, and authorize the Mayor to sign the Agreements. Passed 5-0

Unpaid Final Accounts

Utility Office Billing Manager Kelly Saenz presented the packet memo.

Riouse/Swartley moved to approve moving uncollected final account from active to Collection, Sewer Liens and Writes Offs. Passed 5-0

Request for Road Closure North 5th Street between Walnut Street and East Wilden Avenue

Goshen Water Superintendent Kent Holdren presented the packet memo.

Riouse/Swartley moved to approve the closure of North 5th Street to thru traffic between Walnut Street and East Wilden Avenue Wednesday, August 11, 2021 and reopening for traffic on Thursday, August 12, 2021 weather permitting. Passed 5-0

Request for Road Closure North 5th Street between Oakridge and East Wilden

Holdren presented the packet memo.

Riouse/Swartley moved to approve the closure of North 5th Street to thru traffic between Oakridge Avenue and East Wilden Avenue Tuesday, August 10, 2021 and reopening for traffic on Wednesday, August 11, 2021 weather permitting. Passed 5-0



Agreement with McCrite Milling and Construction Co., Inc.

Legal Compliance Administrator Shannon Marks presented the packet memo.

Riouse/Swartley moved to approve and authorize the Mayor to execute the agreement with McCrite Milling & Construction Co., Inc. for the North Goshen Asphalt Milling Project. Passed 5-0

Privilege of the Floor

No one spoke.

Stutsman/Swartley moved to approve Civil City and Utility claims and adjourn. Passed 5-0

Adjournment at 2:14 p.m.

APPROVED

Jeremy Stutsman, Chair

Michael Landis, Member

Mary Nichols, Member

Barb Swartley, Member

DeWayne Riouse, Member



ATTEST

Richard Aguirre, Clerk-Treasurer

From: [Weaver, Jeffery](#)
To: [mayor](#)
Cc: [Nisley, Jean](#); [Deegan, Rossa](#); [Gibbs, David](#)
Subject: BOW 8/16/2021 - Partial Sidewalk Closure
Date: Tuesday, August 10, 2021 2:24:43 PM
Attachments: [image001.jpg](#)

Rolly Hilty stopped in this afternoon, he is working on 111 S. Main Street. He needs to set up a ladder or potentially scaffolding outside of the building, and was hoping to close up a 24x10 portion of the sidewalk. This would leave enough space on the sidewalk for pedestrians to pass through while providing a safe space to work.

He had a question as to what type of fence would be required (for example, does it need to be solid or chain-link, of a certain height).

I'm copying Jean and Rossa because they are aware of the project, and David because this involves sidewalks.

Thanks,

Jeffery Weaver, CPA
City of Goshen
Deputy Clerk-Treasurer
574-534-3303





**Engineering Department
CITY OF GOSHEN**

204 East Jefferson Street, Suite 1 • Goshen, IN 46528-3405

Phone (574) 534-2201 • Fax (574) 533-8626 • TDD (574) 534-3185
engineering@goshencity.com • www.goshenindiana.org

MEMORANDUM

TO: Board of Public Works and Safety

FROM: Goshen Engineering Department

RE: **COLLEGE AVENUE ROAD CLOSURE EAST OF LINCOLNWAY EAST /
US 33 (JN: 2016-0021)**

DATE: August 16, 2021

Phend & Brown is planning to close College Avenue between Lincolnway East / US 33 and Oak Lane on an additional day – Saturday, August 21 – due to rain preventing their work on Saturday, August 7. The closure is part of the US 33 & College Avenue intersection widening project and is necessary to provide safer conditions for construction crews and traffic during installation of deep stormwater pipe crossings.

College Avenue will be re-opened at the end of each day, and access will be maintained to residential properties and businesses within the closure. Required traffic controls will be utilized.



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MEMORANDUM

TO: Goshen Board of Public Works & Safety

FROM: Goshen Engineering

RE: **MADISON STREET & COLLEGE AVENUE RECONSTRUCTION**
(JN: 2021-0016)

DATE: July 16, 2020

On August 9, 2021, we received proposals for the above referenced project. Following are the results:

Niblock Excavating - \$585,735.50
Rieth-Riley - \$698,556.65
Milestone Contractors - \$729,350.50

The itemized bid tab is attached for your reference.

The Engineering Department is requesting the Board of Public Works and Safety to award the contract to Niblock Excavating as the lowest responsive and responsible bidder.

Requested Motion: Approve the Agreement with Niblock Excavating for the Madison Street & College Avenue Reconstruction project in the amount of \$585,735.50.

MADISON STREET & COLLEGE AVENUE RECONSTRUCTION - JN: 2021-0016
MATERIAL BID TAB
BID DUE DATE - August 9, 2021

BASE BID

Item No.	Est. Quantity	Unit	Description	Niblock Excavating		Rieth-Riley		Milestone Contractors	
				Unit Price	Amount	Unit Price	Amount	Unit Price	Amount
1	1	LSUM	Mobilization & Demobilization	\$28,500.00	\$28,500.00	\$34,800.00	\$34,800.00	\$34,500.00	\$34,500.00
2	1	LSUM	Traffic Control	\$35,000.00	\$35,000.00	\$61,986.15	\$61,986.15	\$76,000.00	\$76,000.00
3	1	LSUM	Tack Coat	\$5,500.00	\$5,500.00	\$1.00	\$1.00	\$6,500.00	\$6,500.00
4	19,450	SYD	2" Surface Milling	\$3.00	\$58,350.00	\$2.50	\$48,625.00	\$2.70	\$52,515.00
5	15	EA	Adjust Manhole/Traffic Castings	\$275.00	\$4,125.00	\$130.00	\$1,950.00	\$1,200.00	\$18,000.00
6	31	EA	Adjust Storm Castings	\$275.00	\$8,525.00	\$130.00	\$4,030.00	\$1,200.00	\$37,200.00
7	1	EA	Adjust/Reset Storm Casting	\$275.00	\$275.00	\$3,000.00	\$3,000.00	\$1,200.00	\$1,200.00
8	29	EA	Adjust Water Valve Casting	\$60.00	\$1,740.00	\$75.00	\$2,175.00	\$50.00	\$1,450.00
9	2,260	TONS	2.0" HMA Surface	\$84.50	\$190,970.00	\$76.00	\$171,760.00	\$69.00	\$155,940.00
10	315	SYD	Full Depth Removal/Repair	\$62.50	\$19,687.50	\$75.00	\$23,625.00	\$45.00	\$14,175.00
11	220	LFT	24" Thermoplastic, White, Stop Bar	\$12.50	\$2,750.00	\$10.00	\$2,200.00	\$10.00	\$2,200.00
12	3,540	LFT	4" Thermoplastic, White, Line (Grooved)	\$2.00	\$7,080.00	\$1.50	\$5,310.00	\$1.50	\$5,310.00
13	1,360	LFT	6" Thermoplastic, White, Line	\$3.50	\$4,760.00	\$4.00	\$5,440.00	\$4.00	\$5,440.00
14	7,055	LFT	4" Thermoplastic, Yellow, Line (Grooved)	\$2.00	\$14,110.00	\$1.50	\$10,582.50	\$1.50	\$10,582.50
15	482	LFT	6" Thermoplastic, Yellow, Gore Line	\$3.50	\$1,687.00	\$4.00	\$1,928.00	\$4.00	\$1,928.00
16	2	EA	RR Crossing Marking, Thermoplastic, White	\$900.00	\$1,800.00	\$900.00	\$1,800.00	\$900.00	\$1,800.00
17	12	EA	Arrow, Thermoplastic, Symbol, White	\$165.00	\$1,980.00	\$110.00	\$1,320.00	\$110.00	\$1,320.00
18	8	EA	Bike, Thermoplastic, Symbol, White	\$275.00	\$2,200.00	\$375.00	\$3,000.00	\$375.00	\$3,000.00
19	3	EA	Tree and Stump Removal	\$3,000.00	\$9,000.00	\$1,500.00	\$4,500.00	\$1,650.00	\$4,950.00
20	2	EA	Stump Removal	\$900.00	\$1,800.00	\$300.00	\$600.00	\$100.00	\$200.00
21	470	SYD	4" Concrete Sidewalk	\$65.00	\$30,550.00	\$95.00	\$44,650.00	\$110.00	\$51,700.00
22	40	SYD	6" Drive Approach	\$105.00	\$4,200.00	\$200.00	\$8,000.00	\$110.00	\$4,400.00
23	40	SYD	8" Drive Approach (Undistributed)	\$125.00	\$5,000.00	\$206.50	\$8,260.00	\$120.00	\$4,800.00
24	320	SYD	ADA Ramp with Truncated Domes	\$145.00	\$46,400.00	\$275.00	\$88,000.00	\$225.00	\$72,000.00
25	100	SYD	ADA Ramp without Truncated Domes - Res.	\$105.00	\$10,500.00	\$260.00	\$26,000.00	\$225.00	\$22,500.00
26	180	SYD	ADA Ramp without Truncated Domes - Comm.	\$105.00	\$18,900.00	\$260.00	\$46,800.00	\$225.00	\$40,500.00
27	1	LSUM	Traffic Loop Replacement	\$17,500.00	\$17,500.00	\$13,000.00	\$13,000.00	\$11,540.00	\$11,540.00
28	46	LFT	Straight Concrete Curb	\$48.50	\$2,231.00	\$54.00	\$2,484.00	\$125.00	\$5,750.00
29	2	EA	Storm Structure and Pipe Removal	\$1,050.00	\$2,100.00	\$1,200.00	\$2,400.00	\$950.00	\$1,900.00
30	2	EA	30" Inlet with Casting	\$1,950.00	\$3,900.00	\$3,200.00	\$6,400.00	\$3,000.00	\$6,000.00
31	130	SYD	Full Depth Pavement Removal and Restoration	\$25.50	\$3,315.00	\$47.00	\$6,110.00	\$25.00	\$3,250.00
32	1,180	LFT	Concrete Curb Removal and Replacement	\$35.00	\$41,300.00	\$49.00	\$57,820.00	\$60.00	\$70,800.00
			BID AMOUNT TOTAL:		\$585,735.50		\$698,556.65		\$729,350.50

I certify that this bid tab is true and accurate, and the contractors submitted all the required bid information.



Josh Corwin
Traffic Engineer
City of Goshen, Indiana

AGREEMENT

FOR

MADISON STREET/COLLEGE AVENUE RECONSTRUCTION, JN 2021-0016

THIS AGREEMENT is entered into on August _____, 2021, by and between **Niblock Excavating, Inc.** (“Contractor”), whose mailing address is PO Box 211, Bristol, IN 46507, and **City of Goshen, Indiana**, a municipal corporation and political subdivision of the State of Indiana acting through the Goshen Board of Public Works and Safety (“City”).

In consideration of the terms, conditions and mutual covenants contained in this agreement, the parties agree as follows:

1. **Scope of Services.**

- 1.1. Contractor shall preform all work for **MADISON STREET/COLLEGE AVENUE RECONSTRUCTION, JN 2021-0016**, in accordance with the complete Specification Documents which are incorporated by reference into this agreement. For the purposes of this agreement, all construction work and services shall be referred to as the “Project.”
- 1.2. Contractor’s Proposal as submitted to City, including all attachments prepared by Contractor are incorporated by reference into this agreement.
- 1.3. Any inconsistency or ambiguity in this agreement shall be resolved by giving precedence in the following order: (a) this agreement; (b) the Specification Documents for the Project, including detailed specifications, plans and drawings; and (c) Contractor’s Proposal.

2. **Effective Date; Term; Liquidated Damages**

- 2.1. The contract shall become effective on the day of execution and approval by the Goshen Board of Public Works and Safety and Contractor.
- 2.2. Contractor shall begin work on the Project as soon as practical and in proper weather conditions after receiving a written notice to proceed from City. Once Contractor begins work in either the Madison Street corridor or the College Avenue corridor, Contractor shall complete all work in that corridor within ninety (90) days.
- 2.3. Contractor shall substantially complete the Project (all work in both the Madison Street corridor and the College Avenue corridor) on or before **July 1, 2022**. “Substantial completion” or “substantially complete” refers to the date when the construction work is sufficiently complete in accordance with the Specification Documents, as may be modified by any written and approved change orders, and the Project is available for its intended use or purpose.
- 2.4. If Contractor does not substantially complete the Project by the date set forth in Section 2.3, City will incur damages. The parties acknowledge that it will be difficult or impossible to quantify, ascertain and prove the actual damages sustained by City in the event of and by reason of such delay. Therefore, the parties agree that, in the event that the Project is not substantially completed by the date set forth in Section 2.3, in lieu of actual damages,

the City of Goshen shall be entitled to deduct from the amounts due to Contractor, or Contractor shall pay to the City of Goshen, the sum of Four Hundred Dollars (\$400) per day as liquidated damages and not as a penalty for each calendar day the substantial completion of the Project is delayed.

3. Compensation

- 3.1. City shall pay Contractor for the performance of the work based on established unit prices for the work items as set forth in Contractor's itemized proposal, a copy of which is attached as Exhibit A.
- 3.2. Contractor's itemized proposal is based on unit prices and estimated quantities with a total cost for the Project estimated at Five Hundred Eighty-five Thousand Seven Hundred Thirty-five and 50/100 Dollars (\$585,735.50). This total cost is not guaranteed and solely for the purpose of comparing proposals and determining the lowest bidder/quoter/offeror. The actual number of units used in the Project may be more or less than the estimated quantities, and payment to Contractor on the contract will be based on the established unit prices and the actual number of units used.
- 3.3. The prices shall cover and include all Contractor's costs necessary to provide for all supervision, labor, materials, equipment, services, permits and other components required to complete the Project in accordance with the Specification Documents, including any incidentals whether or not specifically called for in the Specification Documents.

4. Payment and Retainage

- 4.1. Upon receipt of a detailed invoice, City shall pay Contractor as work progresses under this contract based on the dollar value of work satisfactorily completed in accordance with the Specification Documents. Partial payment(s) under this contract will be made no more frequently than once every thirty (30) days.
- 4.2. In accordance with Indiana Code § 36-1-12-14, City shall withhold payment of money from the contract price in a sufficient amount to pay the subcontractors, laborers, material suppliers, and those furnishing services or five percent (5%) of the dollar value of all work satisfactorily completed, whichever is greater, until the Project is substantially complete. Upon substantial completion, if minor items remain uncompleted, and amount computed under Indiana Code § 36-1-12-14(f) shall be withheld until those items are completed. The retainage shall be held either by City or placed in an escrow account with a bank, savings and loan institution or the state as the escrow agent.
- 4.3. Contractor shall submit proof to City that Contractor has paid all subcontractors, material suppliers, laborers, and those furnishing services for the Project before final payment is made.
- 4.4. Upon Contractor's completion of the Project in accordance with the Specification Documents, the final inspection and acceptance by City, and provided Contractor has submitted proof that Contractor has paid all subcontractors, material suppliers, laborers, or those furnishing services under this contract, City shall pay Contractor the final payment within one hundred twenty (120) days after such completion, inspection, acceptance, and delivery of acceptable evidence. Final payment will not be made on any amounts that are in dispute.

- 4.5. Contractor shall submit to City the detailed invoice along with proof of payment for labor and materials furnished for the Project to the following address, or at such other address as City may designate in writing.

City of Goshen
c/o Goshen Engineering Department
204 East Jefferson Street, Suite 1
Goshen, IN 46528

- 4.6. Provided there is no dispute on amounts due, including amounts due all subcontractors, material suppliers, laborers, and those furnishing services for the Project, payment will be made to Contractor within forty-five (45) days following City's receipt of the detailed invoice, except for final payment under Section 4.4. If any dispute arises, the undisputed amount will be paid. Payment is deemed to be made on the date of mailing the check.
- 4.7. Any payment made by City before or after final acceptance of the work shall not affect the obligation of Contractor to repair or replace any defective parts, or otherwise correct any work.
- 4.8. Contractor is required to have a current W-9 form on file with the Goshen Clerk-Treasurer's Office before City will issue payment.

5. Materials and Workmanship; Inspection

- 5.1. All products, materials, components, equipment, supplies or workmanship entering into the performance of this contract shall be as specified in the Specification Documents, of the best grade and free of defects, and subject to the City's observation, inspection and testing.
- 5.2. Upon request of City, Contractor shall furnish to City for approval full information concerning products, materials, components, equipment, or supplies that Contractor contemplates using in the Project.
- 5.3. City's representative shall be afforded complete and unhindered access to the work for observation, inspecting and testing. Contractor shall provide proper and safe conditions for such access.
- 5.4. City shall have the right to reject materials and/or workmanship and require the correction or replacement of products, materials, components, equipment, supplies or workmanship which are defective or do not conform to the requirements of the Specification Documents. Contractor shall correct, at Contractor's expense, any defects, omissions or nonconformance after written notice from City. Such correction shall also include the removal from the work site.
- 5.5. In the event Contractor fails, refuses or neglects to correct any defects, omission or nonconformance, City may correct the same and Contractor agrees to pay on demand the cost and expense for making the correction.

6. Maintenance Bond

- 6.1. Contractor agrees to provide City an approved maintenance bond in an amount equal to ten percent (10%) of the contract price upon completion of the Project and acceptance by the City.

- 6.2. The maintenance bond shall guarantee that all workmanship and materials used in the Project are in accordance with the Specification Documents. Contractor shall be responsible for removing and correcting all defects due to faulty workmanship and/or materials and shall pay for any damages to other work resulting therefrom which shall be discovered within the guarantee period.
- 6.3. The maintenance bond shall not be released until one (1) year after the acceptance of the work by City.

7. Performance Bond

- 7.1. Contractor agrees to provide City an approved performance bond equal to the contract price within fourteen (14) days after award of the contract.
- 7.2. The performance bond shall guarantee the faithful and proper performance of the work in accordance with the Specification Documents. The performance bond must specify that a modification, omission or addition to the terms and conditions of the contract, plans, specifications, drawings or profile; a defect in the contract; or a defect in the proceedings preliminary to the letting and award of the contract does not discharge the surety.
- 7.3. The surety on the performance bond shall not be released until one (1) year after the date of the City's final settlement with Contractor.

8. Payment Bond

- 8.1. Contractor agrees to provide City an approved payment bond equal to the contract price within fourteen (14) days after award of the contract.
- 8.2. The payment bond is binding on Contractor, the subcontractor (if any), and their successors and assigns for the payment of all indebtedness to a person for labor and services performed, material furnished, or services rendered. The payment bond must state that it is for the benefit of the subcontractors, laborers, material suppliers, and those performing services. The payment bond must specify that a modification, omission or addition to the terms and conditions of the contract, plans, specifications, drawings or profile; a defect in the contract; or a defect in the proceedings preliminary to the letting and award of the contract does not discharge the surety.
- 8.3. The surety on the payment bond shall not be released until one (1) year after the date of the City's final settlement with Contractor.

9. Independent Contractor

- 9.1. Contractor shall operate as a separate entity and independent contractor of the City of Goshen. Any employees, agents or subcontractors of Contractor shall be under the sole and exclusive direction and control of Contractor and shall not be considered employees, agents or subcontractors of City. City shall not be responsible for injury, including death, to any persons or damages to any property arising out of the acts or omissions of Contractor and/or Contractor's employees, agents or subcontractors.
- 9.2. Contractor understands that City will not carry worker's compensation or any other insurance on Contractor and/or Contractor's employees or subcontractors. Contractor is solely responsible for compliance with all federal, state and local laws regarding reporting

of compensation earned and payment of taxes. City will not withhold federal, state or local income taxes or any other payroll taxes.

10. Non-Discrimination

10.1. Contractor and any subcontractors shall not discriminate against any employee or applicant for employment to be employed in the performance of this contract, with respect to the employee or applicant's hire, tenure, terms, conditions, or privileges of employment or any other matter directly or indirectly related to employment, because of the employee's or applicant's race, religion, color, sex, disability, national origin, or ancestry. Breach of this covenant may be regarded as a material breach of contract.

10.2. Contractor agrees:

10.2.1. That in the hiring of employees for the performance of work under this contract or any subcontract hereunder, no contractor, or subcontractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, religion, color, sex, national origin or ancestry, discriminate against any citizen of the state of Indiana who is qualified and available to perform the work to which the employment relates;

10.2.2. That no contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this contract on account of race, religion, color, sex, national origin or ancestry;

10.2.3. That there may be deducted from the amount payable to Contractor by City under this contract, a penalty of Five Dollars (\$5.00) for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of the contract; and

10.2.4. That this contract may be cancelled or terminated by City, and all money due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this section of the contract.

11. Employment Eligibility Verification

11.1. Contractor shall enroll in and verify the work eligibility status of all Contractor's newly hired employees through the E-Verify program as defined in Indiana Code § 22-5-1.7-3. Contractor is not required to participate in the E-Verify program should the program cease to exist. Contractor is not required to participate in the E-Verify program if Contractor is self-employed and does not employ any employees.

11.2. Before an individual who is required to be verified under Indiana Code § 22-5-1.7 begins work on the Project, Contractor shall submit to City the E-Verify case verification number for the individual. An individual who is required to be verified under Indiana Code § 22-5-1.7 whose final case result is final non-confirmation may not be employed on the Project.

11.3. Contractor shall not knowingly employ or contract with an unauthorized alien, and Contractor shall not retain an employee or continue to contract with a person that Contractor subsequently learns is an unauthorized alien.

- 11.4. Contractor shall require their subcontractors, who perform work under this contract, to certify to Contractor that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. Contractor agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.
- 11.5. City may terminate the contract if Contractor fails to cure a breach of this provision no later than thirty (30) days after being notified by City of a breach.

12. Drug Testing Program

- 12.1. Contractor, including any subcontractor of Contractor, must implement the employee drug testing program that complies with the requirements of Indiana Code § 4-13-18 et seq. as described in Contractor's written plan submitted with their proposal.
- 12.2. City may cancel or terminate this contract in the event Contractor, including any subcontractor of Contractor, fails to implement the employee drug testing program during the term of the contract for this Project; fails to provide information regarding the implementation of Contractor's employee drug testing program at the request of City; or provides City false information regarding the employee drug testing program.

13. Contractor Compliance with Other Laws

- 13.1. In accordance with Indiana Code § 5-16-13-11, Contractor agrees:
 - 13.1.1. Contractor shall not pay cash to any individual employed by Contractor for work done by the individual on the Project.
 - 13.1.2. Contractor is and shall remain in compliance with the federal Fair Labor Standards Act of 1938, as amended (29 USC 201-209) and the state Minimum Wage Law of 1965 (Indiana Code § 22-2-2-1 through Indiana Code § 22-2-2-8).
 - 13.1.3. Contractor is and shall remain in compliance with the worker's compensation or occupational diseases requirements under Indiana Code § 22-3-5-1 and Indiana Code § 22-3-7-34.
 - 13.1.4. Contractor is and shall remain in compliance with the unemployment insurance under Indiana Code § 22-4-1 through Indiana Code § 22-4-39.5.
 - 13.1.5. Contractor shall comply with the training program requirements under Indiana Code § 5-16-13-12 as applicable.
- 13.2. In accordance with Indiana Code § 5-16-13-13, Contractor, including any subcontractor of Contractor, shall preserve all payroll and related records for all employees performing work under the Project for a period of three (3) years after completion of the Project; and shall open such records to inspection by the department of workforce development.

14. Indemnification

- 14.1. Contractor shall indemnify and hold harmless the City of Goshen and City's agents, officers, and employees from and against any and all liability, obligations, claims, actions, causes of action, judgments, liens, damages, penalties, injuries, or accidental deaths caused by any intentional, reckless, or negligent act or omission by Contractor or any of Contractor's agents, officers, and employees during the performance of this contract. Such

indemnity shall include reasonable attorney's fees and other expenses incurred by City, and shall not be limited by reason of insurance coverage required by this contract.

15. Insurance

- 15.1. Prior to commencing work, Contractor shall furnish City a certificate of insurance in accordance with the following minimum requirements, shall maintain the insurance in full force and effect, and shall keep on deposit at all times during the term of the contract with City the certificates of proof issued by the insurance carrier that such insurance is in full force and effect. Contractor shall specifically include coverage for the City of Goshen as an additional insured for Employer's Liability, General Liability and Automobile Liability.
- 15.2. Each certificate shall require that written notice be given to the City at least thirty (30) days prior to the cancellation or a material change in the policy.
- 15.3. Contractor shall at least include the following types of insurance with the following minimum limits of liability:
 - 15.3.1. Workers Compensation and Employer's Liability - Statutory Limits
 - 15.3.2. General Liability - Combined Bodily Injury and Property Damage, \$1,000,000 each occurrence and \$2,000,000 aggregate
 - 15.3.3. Automobile Liability - Combined Bodily Injury and Property Damage, \$1,000,000 each occurrence and aggregate
 - 15.3.4. Excess Umbrella Coverage - \$1,000,000 each occurrence

16. Force Majeure

- 16.1. Except for payment of sums due, neither party shall be liable to the other or deemed in default under this contract if and to the extent that such party's performance under this contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party and could not have been avoided by exercising reasonable diligence. Examples of force majeure are natural disasters or decrees of governmental bodies not the fault of the affected party.
- 16.2. If either party is delayed by force majeure, the party affected shall provide written notice to the other party immediately. The notice shall provide evidence of the force majeure event to the satisfaction of the other party. The party shall do everything possible to resume performance. If the period of non-performance exceeds thirty (30) calendar days, the party whose ability to perform has not been affected may, by giving written notice, terminate the contract and the other party shall have no recourse.

17. Default

- 17.1. If Contractor fails to perform the work or comply with the provisions of this contract, then Contractor may be considered in default.
- 17.2. It shall be mutually agreed that if Contractor fails to perform the work or comply with the provisions of this contract, City may issue a written notice of default and provide a period of time that shall not be less than thirty (30) days in which Contractor shall have the opportunity to cure. If the default is not cured within the time period allowed, the contract may be terminated by the City. In the event of default and failure to satisfactorily remedy

the default after receipt of written notice, the City may otherwise secure similar work in any manner deemed proper by the City, and Contractor shall be liable to the City for any excess costs incurred

- 17.3. Contractor may also be considered in default by the City if any of the following occur:
- 17.3.1. There is a substantive breach by Contractor of any obligation or duty owed under the provisions of this contract.
 - 17.3.2. Contractor is adjudged bankrupt or makes an assignment for the benefit of creditors.
 - 17.3.3. Contractor becomes insolvent or in an unsound financial condition so as to endanger performance under the contract.
 - 17.3.4. Contractor becomes the subject of any proceeding under law relating to bankruptcy, insolvency or reorganization, or relief from creditors and/or debtors.
 - 17.3.5. A receiver, trustee, or similar official is appointed for Contractor or any of Contractor's property.
 - 17.3.6. Contractor is determined to be in violation of federal, state, or local laws or regulations and that such determination renders Contractor unable to perform the work described under these Specification Documents.
 - 17.3.7. The contract or any right, monies or claims are assigned by Contractor without the consent of the City.

18. Termination

- 18.1. The contract may be terminated in whole or in part, at any time, by mutual written consent of both parties. Contractor shall be paid for all work performed and expenses reasonably incurred prior to notice of termination.
- 18.2. City may terminate this contract, in whole or in part, in the event of default by Contractor.
- 18.3. The rights and remedies of the parties under this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

19. Subcontracting or Assignment of Contract

- 19.1. Contractor shall not subcontract or assign any right or interest under the contract, including the right to payment, without having prior written approval from City. Any attempt by Contractor to subcontract or assign any portion of the contract shall not be construed to relieve Contractor from any responsibility to fulfill all contractual obligations.

20. Change Orders

- 20.1. If in the course of the work it becomes necessary to change or alter the original specifications, City may issue a change order to add, delete or change an item(s) in the original contract. If the change order requires an increase or decrease in units of materials that are included in the original contract, the cost of these units of materials must be the same as shown in the original contract.

20.2. Except in the case of an emergency, Contractor shall not commence any additional work or change in scope of the work until the change order is authorized in writing and signed by both parties. Contractor shall make no claim for additional compensation in the absence of a prior written and authorized change order signed by both parties.

21. Amendments

21.1. Any modification or amendment to the terms and conditions of the contract, including a change order, shall not be binding unless made in writing and signed by both parties. Any verbal representations or modifications concerning the contract shall be of no force and effect.

22. Waiver of Rights

22.1. No right conferred on either party under this contract shall be deemed waived and no breach of this contract excused unless such waiver or excuse shall be in writing and signed by the party claimed to have waived such right.

23. Applicable Laws

23.1. Contractor agrees to comply with all applicable federal, state, and local laws, rules, regulations and ordinances, and all contractual provisions required to be included in this contract are incorporated by reference.

23.2. The provisions of Indiana Code § 5-16-13 et seq., Requirement of Contractors on Public Works Projects, are specifically incorporated into this contract by reference.

23.3. Contractor agrees to obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental rules or regulations in the performance of the Project. Failure to do so maybe deemed a material breach of contract.

24. Miscellaneous

24.1. Any provision of this contract or incorporated documents shall be interpreted in such a way that they are consistent with all provisions required by law to be inserted into the contract.

24.2. In the event of a conflict between these documents and applicable laws, rules, regulations or ordinances, the most stringent or legally binding requirement shall govern.

24.3. These documents shall be construed in accordance with and governed by the laws of the State of Indiana and any suit must be brought in a court of competent jurisdiction in Elkhart County, Indiana.

24.4. In the event legal action is brought to enforce or interpret the terms and conditions of these documents, the prevailing party of such action shall be entitled to recover all costs of that action, including reasonable attorneys' fees.

25. Severability

25.1. In the event that any provision of the contract is found to be invalid or unenforceable, then such provision shall be reformed in accordance with applicable law. The invalidity or unenforceability of any provision of the contract shall not affect the validity or enforceability of any other provision of the contract.

26. Binding Effect

26.1. All provisions, covenants, terms and conditions of this contract apply to and bind the parties and their legal heirs, representatives, successors and assigns.

27. Authority to Execute

27.1. The undersigned affirm that all steps have been taken to authorize execution of this agreement, and upon the undersigned's execution, bind their respective organizations to the terms of the agreement.

IN WITNESS WHEREOF, the parties have executed this agreement on the dates as set forth below.

City of Goshen, Indiana
Goshen Board of Public Works and Safety

Niblock Excavating, Inc.

Jeremy P. Stutsman, Mayor

Chad Niblock, President

Date: August ____, 2021

Date: August ____, 2021

EXHIBT A – CONTRACTOR’S ITEMIZED PROPOSAL

PART 2 – PROPOSAL

Contractor proposes to furnish all necessary supervision, labor, materials, equipment, services, permits and other components required to complete the Project in accordance with the Specification Documents, including any incidentals, for the established unit prices for the work items set forth below.

Contractor acknowledges that the evaluation of proposals shall be based on such sum and further acknowledges that the quantities stated are estimates only and solely for the purpose of comparing proposals and determining the lowest bidder/quoter/offeror. Contractor further understands that compensation for all work required to complete the Project will be based on the unit prices for the work items and the actual number of units used in the Project.

By submitting a proposal, the Contractor agrees that the proposal and price(s) shall remain firm for a minimum period of sixty (60) days after the opening of the proposals.

Item No.	Description	Estimated Quantity	Unit	Unit Price	Extended Amount
1	Mobilization & Demobilization	1	LSUM	\$28,500.00	\$28,500.00
2	Traffic Control	1	LSUM	\$35,000.00	\$35,000.00
3	Tack Coat	1	LSUM	\$5,500.00	\$5,500.00
4	2" Surface Milling	19,450	SYD	\$3.00	\$58,350.00
5	Adjust Manhole/Traffic Castings	15	EA	\$275.00	\$4,125.00
6	Adjust Storm Castings	31	EA	\$275.00	\$8,525.00
7	Adjust/Reset Storm Casting	1	EA	\$275.00	\$275.00
8	Adjust Water Valve Coating	29	EA	\$60.00	\$1,740.00
9	2.0" HMA Surface	2,260	TONS	\$84.50	\$190,970.00
10	Full Depth Removal/Repair	315	SYD	\$62.50	\$19,687.50
11	24", Thermoplastic, White, Stop Bar	220	LFT	\$12.50	\$2,750.00
12	4", Thermoplastic, White, Line (Grooved)	3,540	LFT	\$2.00	\$7,080.00
13	6", Thermoplastic, White, Line	1,360	LFT	\$3.50	\$4,760.00
14	4", Thermoplastic, Yellow, Line (Grooved)	7,055	LFT	\$2.00	\$14,110.00
15	6", Thermoplastic, Yellow, Gore Line	482	LFT	\$3.50	\$1,687.00
16	RR Crossing Marking, Thermoplastic, White	2	EA	\$900.00	\$1,800.00
17	Arrow, Thermoplastic, Symbol, White	12	EA	\$165.00	\$1,980.00

Item No.	Description	Estimated Quantity	Unit	Unit Price	Extended Amount
18	Bike, Thermoplastic, Symbol, White	8	EA	\$275.00	\$2,200.00
19	Tree and Stump Removal	3	EA	\$3,000.00	\$9,000.00
20	Stump Removal	2	EA	\$900.00	\$1,800.00
21	4", Concrete Sidewalk	470	SYD	\$65.00	\$30,550.00
22	6" Drive Approach	40	SYD	\$105.00	\$4,200.00
23	8" Drive Approach (Undistributed)	40	SYD	\$125.00	\$5,000.00
24	ADA Ramp with Truncated Domes	320	SYD	\$145.00	\$46,400.00
25	ADA Ramp without Truncated Domes - Res.	100	SYD	\$105.00	\$10,500.00
26	ADA Ramp without Truncated Domes - Comm.	180	SYD	\$105.00	\$18,900.00
27	Traffic Loop Replacement	1	LSUM	\$17,500.00	\$17,500.00
28	Straight Concrete Curb	46	LFT	\$48.50	\$2,231.00
29	Storm Structure and Pipe Removal	2	EA	\$1,050.00	\$2,100.00
30	30" Inlet with Casting	2	EA	\$1,950.00	\$3,900.00
31	Full Depth Pavement Removal and Restoration	130	SYD	\$25.50	\$3,315.00
32	Concrete Curb Removal and Replacement	1,180	LFT	\$35.00	\$41,300.00
				Total Amount	\$585,735.50